FILE COPY

Office - Supreme Court,
FILED
FEB 27 1948
CHARLES ELMORE CROPLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 632

RACHAEL BROWN,

Petitioner,

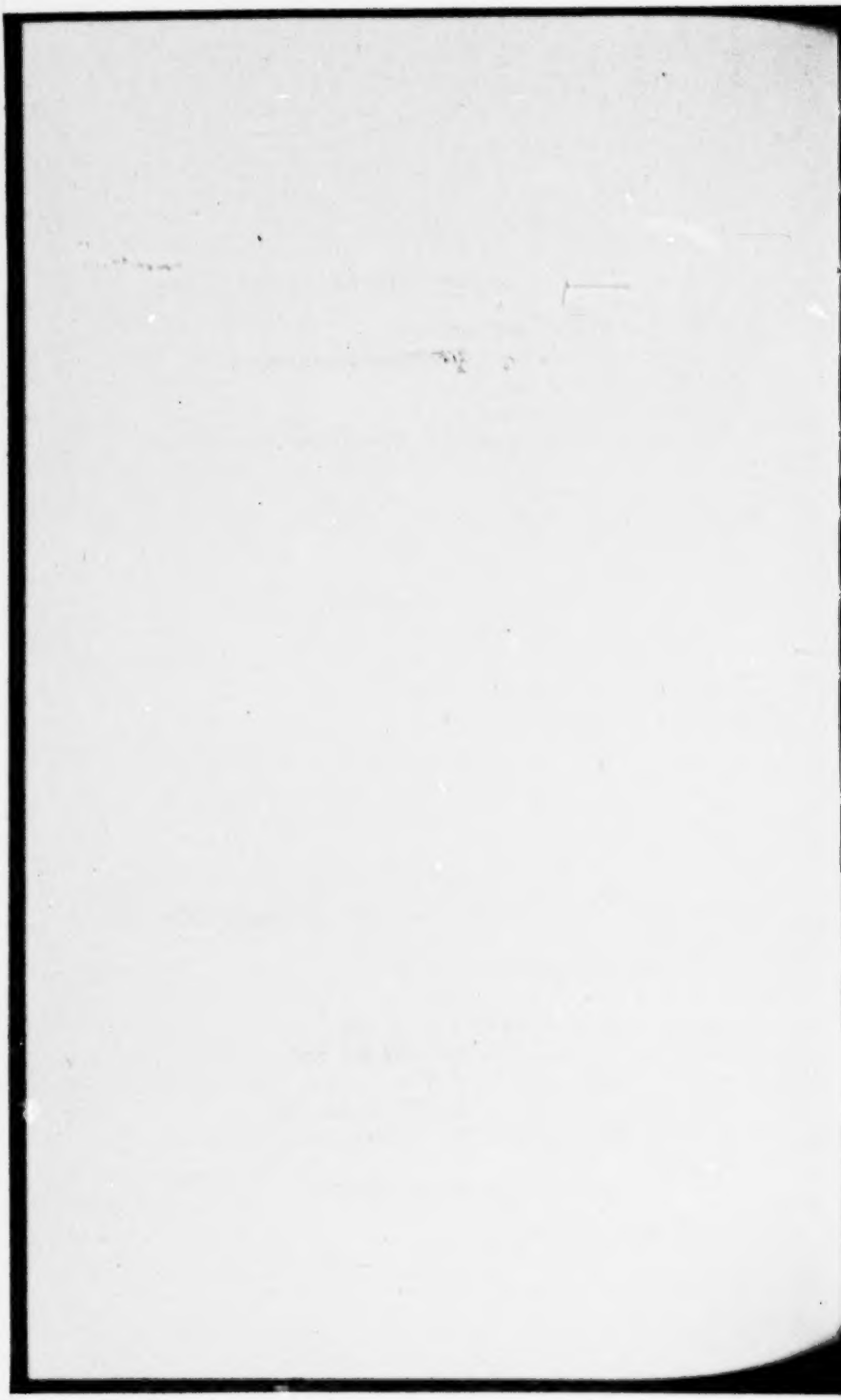
vs.

THE UNITED STATES OF AMERICA, AND NELLIE BROWN,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

LIONEL P. KRISTELLER,
SAUL J. ZUCKER,
Solicitors for and of counsel with Petitioner,
744 Broad Street,
Newark 2, N. J.



INDEX

Subject Index

	Page
Petition for writ of certiorari	1
Summary statement of the matter involved	1
Jurisdiction	5
Questions presented	7
Reasons relied upon for the allowance of the writ	7
Prayer for writ	8
Brief in support of petition	10
Opinions of the courts below	10
Jurisdiction (see petition)	10
Statement of the case (see petition)	10
Specification of errors	10
Argument	11
Summary of argument	11
Point A	11
Point B	14
Appendix—Opinion of the District Court of the District of Columbia in *Snyder* v. *Buck*	16

Table of Cases Cited

Commissioner of Internal Revenue v. *Tower*, 327 U. S. 280	6
Erie R. R. v. *Duplak*, 286 U. S. 440	6
Erie R. R. v. *Hilt*, 247 U. S. 97	6
Fidelity Union v. *Field*, 311 U. S. 169	6
Franchi, In re, 119 N.J.E. 457, 182 Atl. 887	12
Klaxon v. *Stentor*, 312 U. S. 674	6
Rooney v. *Rooney*, 54 N.J.E. 231, 34 Atl. 682	12
Snyder v. *Buck* (D.C.U.S., District of Columbia, January 22, 1948)	5
Sparks v. *Ross*, 79 N.J.E. 99, 80 Atl. 932	12

Statutes Cited

	Page
Judicial Code, Sec. 240(a) as amended (28 U.S.C., Sec. 347)	5
Laws of New Jersey, 1703-1820, p. 667	12
New Jersey P. L. 1902:	
Chapter 95	13
Chap. 154	13
New Jersey P. L. 1907, Chap. 216	13
New Jersey P. L. 1930, Chap. 37	13
New Jersey R.S.:	
2:50-33	11, 13, 14
37:1-2	3
37:1-10	2, 11, 14
37:1-13	3
38 U. S. C. 801, et seq	2

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 632

RACHAEL BROWN,

Petitioner,

vs.

THE UNITED STATES OF AMERICA, AND NELLIE BROWN,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

To The Honorable The Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Rachael Brown, respectfully shows:

I

Summary Statement of the Matter Involved

The within application for a writ of certiorari is prosecuted to review a judgment of the Circuit Court of Appeals

for the Third Circuit, entered November 28, 1947 (R. 27) affirming a judgment of the United States District Court for the District of New Jersey, entered June 30, 1947, of no cause of action and discharging liability of the United States of America upon a policy of National Service Life Insurance as to all persons except the respondent, Nellie Brown (R. 25).

Suit was instituted on August 29, 1946 in the District Court of the United States, for the District of New Jersey, for a declaratory judgment that petitioner is the widow of William C. Brown, a deceased veteran, and therefore entitled to the proceeds of his National Service Life Insurance policy. Petitioner, Rachael Brown, was designated in the policy as the principal beneficiary. Respondent, Nellie Brown, is the mother of the decedent and was therein named as contingent beneficiary. The United States of America, being obligated to pay under the provisions of said policy of insurance, was made a party defendant.

The jurisdiction of the District Court of the United States was invoked pursuant to Sec. 817 of the "National Service Life Insurance Act of 1940", and the acts amendatory thereof and supplemental thereto.[1]

The pertinent excerpt of the New Jersey Statute pertaining to the validity of marriage[2] is:

> "Nothing in this chapter shall be deemed or taken to render any common law or other marriage, otherwise lawful, contracted before December first, nineteen hundred and thirty-nine, invalid by reason of the failure to take out a license as herein provided. But no marriage contracted on and after December first, nineteen hundred and thirty-nine, shall be valid unless the contracting parties shall have obtained a marriage license as required by Section 37:1-2 of this Title, and

---

[1] 38 U.S.C. 801, *et seq.*

[2] N.J.R.S. 37:1-10.

unless, also, the marriage, after license duly issued therefor, shall have been performed by or before any person, religious society, institution or organization authorized by Section 37: 1-13 of this Title to solemnize marriages; and failure in any case to comply with both prerequisites aforesaid, which shall always be construed as mandatory and not merely directory, shall render the purported marriage absolutely void."

On May 6, 1943, petitioner, Rachael Brown, and William C. Brown, (also known as Willie Brown), applied in writing, pursuant to the Laws of New Jersey[3], to the City Clerk of the City of Newark, New Jersey, that being the municipality in which petitioner resided, for a marriage license (R. 2).

On May 8, 1943, pursuant to said application, the City Clerk issued marriage license No. 1684 to petitioner and Willie Brown whereby any one of the persons designated by law[4] was authorized to solemnize marriage between them.

On May 16, 1943, the Rev. W. A. Pitts of Newark, New Jersey, a Minister of the Baptist Church and authorized by law to perform marriage ceremonies within the State of New Jersey, solemnized the rites of matrimony between petitioner and Willie Brown at Newark, New Jersey, and thereafter duly executed and filed a certificate with the Bureau of Vital Statistics, Department of Health of the State of New Jersey, certifying the aforesaid marriage in accordance with the Laws of New Jersey (R.15).

Following the performance of the marriage ceremony, the petitioner and Willie Brown cohabited and lived together as man and wife (R. 15).

On the application for the marriage license (Exhibit "A" attached to Complaint), Willie Brown swore that he was single (Question 7—Application for license—R. 6)

[3] N.J.R.S. 37:1-2 *et seq.*

[4] N.J.R.S 37:1-13

and the identifying witness, James B. Marshall, declared under oath that he knew Willie Brown for fourteen years; that the answers given by the said Willie Brown in the application for the marriage license were "true, full and perfect answers"; and that he knew of no moral or legal obstacle to the marriage.

On April 5, 1943, Willie Brown's first wife obtained a decree *nisi* (interlocutory decree) of divorce, and said decree became final on July 6, 1943 (R. 15).

After his marriage to plaintiff, Willie Brown entered into the military service of the United States, and during such service made application for a policy of National Life Insurance in the amount of Ten Thousand Dollars ($10,000.00), which insurance became effective December 30, 1943. (R. 15-16). Petitioner was described therein as the wife of the insured and designated as principal beneficiary (R. 16).

On November 19, 1944, while said insurance was still in effect, the insured, Willie Brown, a soldier in the United States Army stationed at Camp Kilmer, New Jersey, died. (R. 16).

Petitioner, on December 30, 1944, duly filed her claim with the Veterans' Administration, the governmental agency entrusted with the administration of all matters arising under the "National Service Life Insurance Act of 1940." Her claim was, on August 19, 1946, disallowed by the Veterans' Administration, it being claimed that she was not the lawful widow of Willie Brown (R. 16).

On June 30, 1947, judgment was entered in favor of the United States of America, and against the petitioner, Rachael Brown, of no cause of action and discharging liability of the United States of America upon policy of National Service Life Insurance as to all persons except the respondent, Nellie Brown (R. 25).

The Circuit Court of Appeals for the Third Circuit affirmed the District Court on November 28, 1947 (R. 26-27).

II

Jurisdiction

1. The date of the judgment of the Circuit Court of Appeals for the Third Circuit to be reviewed was November 28, 1947. The within application is made within three months of the entry of the said judgment.

2. The jurisdiction of this Court to issue the writ of *certiorari* herein prayed for is invoked under Judicial Code, Section 240(a) as amended by the Act of February 13, 1925, 43 Stat. 938 (Title 28 U. S. C. Sec. 347).

3. Petitioner claims that under and by virtue of the local law of the State of New Jersey, she was the lawful widow of Willie Brown and entitled to the benefits under his National Service Life Insurance policy. The failure of the Circuit Court of Appeals to sustain petitioner's claim as beneficiary under said policy amounted to an improper application of local New Jersey law on the issue of whether or not petitioner was decedent's lawful widow when the benefits of said policy became payable.

4. Petitioner claims that the judgment of the Circuit Court of Appeals for the Third Circuit sustaining the determination of the Veterans' Administration that petitioner is not the lawful widow of Willie Brown, is at variance with a decision of the District Court of the United States for the District of Columbia, entitled *Madeline Ursula Snyder* v. *Rear Admiral W. A. Buck, Paymaster General of the Navy,* Civil Action No. 1225-47, entered January 22, 1948 (not yet officially reported), which, as the prevailing law in the District, constitutes the law for the Circuit Court of Appeals for the District of Columbia. Said decision, in effect, holds that only a court, and not an administrative tribunal, may declare a marriage valid or invalid, and to

that extent presents a conflict in circuits warranting this Court to assume jurisdiction.

5. It is a matter of great public importance to have a definite ruling established as to whether administrative tribunals such as the Veterans' Administration, the Navy Department or the War Department may declare a marriage valid or invalid in connection with action upon a claim for benefits under National Service Life Insurance policies. Considering the number of such claims that have been and are daily being presented to the various administrative tribunals, the importance of having a definite policy established is immediately apparent as it affects claimants throughout the entire United States. The Third Circuit in the case at bar has recognized the propriety of the Veterans' Administration making the determination of whether a marriage was valid or invalid. The Circuit Court of Appeals for the District of Columbia, by virtue of the *Snyder* v. *Buck* decision, *supra*, in the District Court of that Circuit, must be deemed to have come to an opposite conclusion.

6. Petitions for writs of certiorari to review decisions of the Circuit Court of Appeals for the Third Circuit which have failed to follow the local law of the State have heretofore been granted by this Court.

Erie R. R. v. *Hilt*, 247 U. S. 97;
Erie R. R. v. *Duplak*, 286 U. S. 440;
Fidelity Union, etc. v. *Field*, 311 U. S. 169;
Klaxon v. *Stentor*, 312 U. S. 674.

7. Petitions for writs of certiorari to resolve a conflict in decisions rendered by the various Circuit Courts of Appeal have heretofore been granted by this Court. *Commissioner of Internal Revenue* v. *Tower*, 327 U. S. 280.

III

The Questions Presented

1. Did the Circuit Court of Appeals for the Third Circuit correctly apply local New Jersey law when it held that a woman, contracting a marriage pursuant to a license duly obtained and a ceremony properly performed with a man between the time when he had received his interlocutory decree of divorce from a prior spouse and a final decree thereunder, was not his widow upon his death?

2. Is it not the New Jersey local law that a marriage, performed pursuant to license obtained and ceremony performed, is valid and subsisting until and unless it is annulled during the lifetime of the parties by a direct proceeding instituted by one of them for that purpose?

3. Under New Jersey local law, is a marriage contracted under the circumstances set forth in 2, *supra*, void or voidable?

4. Is the Veterans' Administration vested with power and authority in determining claims presented to it under National Service Life Insurance policies to declare a marriage valid or invalid?

IV

Reasons Relied upon for the Allowance of the Writ

1. The decision of the Circuit Court of Appeals for the Third Circuit is at variance with the applicable law in the District Court for the District of Columbia—there being no pertinent decision of the Circuit Court of Appeals for that Circuit.

2. It is of public importance that a uniform policy be established with respect to the right of administrative

tribunals such as the Veterans' Administration, the Navy Department and the War Department to determine the validity of marriages in connection with claims for benefits arising under National Service Life Insurance policies or pensions.

3. The decision of the Circuit Court of Appeals for the Third Circuit held that the Judge of the United States District Court for the District of New Jersey correctly applied New Jersey local law in determining whether the marriage under question was void or voidable. All of the decisions relied upon by the District Court Judge were rendered at times when the then existing New Jersey Statutes held that a marriage contracted by a person who had a spouse living was void from the beginning. All of the statutes existing at the time of the decisions relied upon have been repealed, and the presently existing statute provides that a marriage *not* accompanied by a ceremony shall be void from the beginning and the issue thereof shall be illegitimate. Another statute says that since 1939 no marriage shall be valid except if accompanied by a license and ceremony. Both these concomitants were present in the instant case, and it is urged that until annulled in a direct proceeding brought for that purpose during the lifetimes of the parties thereto the marriages are valid, and every administrative tribunal must recognize it as such.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari issue out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Third Circuit, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a transcript of the record and proceedings herein; and that the judgments of the United States District Court for the District of New Jersey and the United States Circuit Court of

Appeals for the Third Circuit be reversed by this Honorable Court, and your petitioner have such other and further relief in the premises as to this Honorable Court may seem just and meet.

Dated: February 26, 1948.

LIONEL P. KRISTELLER,
SAUL J. ZUCKER,
Attorneys for and of Counsel
With Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Opinions of the Courts Below

The opinion of the District Court for the District of New Jersey in this case is reported in 72 Fed. Supp. 153. The opinion on appeal in the Circuit Court of Appeals for the Third Circuit is reported in 164 Fed. 2d 490.

II

Jurisdiction

A concise statement particularly disclosing the basis upon which it is contended that this Court has jurisdiction to review the judgment in question, has been given under Heading II in the petition, and in the interest of brevity will not be repeated in the brief.

III

Statement of the Case

A concise statement of the case containing all that is material to the consideration of the questions presented, has been given under Heading I of the petition, and in the interest of brevity will not be repeated in the brief.

IV

Specification of Errors

The specification of errors is substantially the same as the reasons for the allowance of the writ as set forth under Heading IV of the petition.

V

ARGUMENT

Summary of the Argument

Point A. Under the local law of New Jersey as established by the pertinent statutes and decisions a marriage contracted by a person who had a spouse living but accompanied by a duly obtained license and a ceremony duly and properly performed is voidable and not void, and is invalid only from the date of a decree of annulment rendered in a proceeding instituted for that purpose by either of the parties thereto in their lifetimes.

Point B. The Veterans' Administration is without power to determine the validity of a marriage in a collateral administrative proceeding to fix benefits under a National Service Life Insurance Policy—the determination of marital status being peculiarly confined to the decisions of judicial tribunals.

Point A

The local law of New Jersey on whether a marriage contracted by a person having a prior spouse living is determined by two statutes; one being N. J. R. S. 37: 1-10, quoted in the summary statement of the matter involved in the body of the petition for certiorari herein, and the other N. J. R. S. 2: 50-33, which reads as follows:

> "A decree of nullity of marriage shall not render illegitimate the issue of any marriage so dissolved, except where the marriage, not being a ceremonial marriage, is dissolved because either of the parties to such marriage had another wife or husband living at the time of a second or other marriage. Such marriage shall be deemed void from the beginning, and the issue thereof shall be illegitimate."

The District Court Judge stated as the New Jersey local law, the following:

> "A marriage such as that entered into by the plaintiff and William C. Brown, while his prior marriage was still in force, is a nullity. Rooney *v.* Rooney, 54 N. J. E. 231; Sparks *v.* Ross, 79 N. J. Eq. 99; In Re. Franchi, 119 N. J. E. 457. No amount of civil or religious ceremonies even after the issuance of a license can make it anything else."

It is respectfully submitted that in so doing the District Court Judge fell into error. Each of the three cases relied upon were rendered at a time when the then existing New Jersey statute law provided that any marriage by a person having a spouse living was absolutely void.

Rooney v. *Rooney,* 54 N. J. E. 231, 34 Atl. 682, was decided in 1896 and involved a marriage performed in 1894 while the existing statute made such a marriage void from the beginning.

Sparks v. *Ross,* 79 N. J. E. 99, 80 Atl. 932, was decided in 1911 and dealt with marriages performed between 1862 and 1873, while the existing statute made such marriages void from the beginning.

In Re. Franchi, 119 N. J. E. 457, 182 Atl. 887, was decided in 1936 but dealt with a marriage contracted in 1904 while the existing statute made such a marriage void from the beginning.

The first legislative declaration with reference to the nature of a bigamous marriage was made in "An Act Concerning Divorces" passed February 16, 1820 (Laws of New Jersey, 1703-1820, p. 667) and incorporated in the Revision of 1709-1877 at page 315, which provided that:

> "Divorce from the bond of matrimony shall be decreed where either of the parties had another wife or husband living at the time of such second or other

> marriage; and that all marriages where either of the parties shall have a former husband or wife living at the time of such marriage, shall be invalid from the beginning and absolutely void, and the issue thereof shall be illegitimate and subject to all the legal disability of such issue."

This act was repealed in 1902 (P. L. 1902, Chap. 95).

In 1902, the Legislature of New Jersey revised the "Act Concerning Marriages" (P. L. 1902, Chap. 154) and provided:

> "A man having a wife alive shall not marry another woman: * * * A marriage or attempted marriage in violation of any of the foregoing provisions shall be absolutely void."

This act was repealed in 1930 (P. L. 1930, Chap. 37).

Again in 1907, the Marriage Act was revised (P. L. 1907, Chap. 216) providing among other grounds for the annulment of a bigamous marriage:

> "The decree of nullity of marriage shall not render illegitimate the issue of any marriage so dissolved except where the marriage is dissolved because either of the parties had another wife or husband living at the time of a second or other marriage. Such marriage shall be deemed void from the beginning and the issue thereof shall be illegitimate."

Thus in the various statutes quoted, the New Jersey Legislature expressly declared a bigamous marriage "invalid from the beginning and absolutely void" from 1820 to 1902; "absolutely void" from 1902 to 1930; and "void from the beginning" from 1907 to 1931. It was in 1931 that New Jersey R. S. 2:50-33, *supra*, was enacted.

It thus appears that the various statutes rendering marriages void from the beginning where one of the parties had a spouse living have all been repealed, and stress is

now laid upon the fact that a license has been obtained and a ceremony duly performed. It is now definitely the law of New Jersey, N. J. R. S. 2:50-33, that children born of a marriage accompanied by a ceremony are legitimate despite the fact that one of the parties had a prior spouse living at the time of the marriage. That statute specifically provides that marriages *unaccompanied* by a ceremony are void from the beginning.

Under N. J. R. S. 37:1-10, quoted *supra*, it is provided that after 1939 no marriage in New Jersey is valid unless accompanied by a license and a ceremony. In the case at bar both of these elements were present. It is difficult, therefore, to see how reliance can be placed upon that particular statute to base a determination of the marriage's invalidity.

It is submitted, therefore, that the statute law of New Jersey renders a marriage such as was contracted in the case at bar voidable and not void. Since no proceeding was taken during the lifetimes of the petitioner and William C. Brown to annul such marriage, petitioner must be deemed to be his lawful widow and entitled to the benefits under the National Service Life Insurance Policy.

Point B

Attached hereto is a decision of the District Court for the District of Columbia, which, among other things, challenges the right of an administrative tribunal to decide the validity of a marriage in a collateral proceeding brought for the purpose of claiming benefits under National Service Life Insurance contracts or under Pension Acts. The full text of the decision is not included in the exhibit since a great deal of it deals with the right of the court under the "Administrative Procedure Act" to review decisions of administrative tribunals. The pertinent part of the decision

is that portion which says that Congress never intended that administrative tribunals should dig up skeletons and pass upon the validity of marriages. The determination of a marital status is something peculiarly entrusted to law courts.

Insofar as this is one of the first decisions to deal with this question and is at variance with the result reached in the decision appealed from, it is of vital importance for this Court to resolve that conflict in the interest of uniformity thruout the country. There will probably be thousands of claims made for benefits under National Service Life Insurance Policies, and it is a matter of prime importance whether in the administrative process the validity of marriages can be tested. It is urged, therefore, that this Court allow its writ of certiorari to review this all important question.

Dated, February 27, 1948.

Respectfully submitted,

LIONEL P. KRISTELLER,
SAUL J. ZUCKER,
Solicitors for and of Counsel with Petitioner.

APPENDIX

DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1225-47

MADELINE URSULA SNYDER, *Plaintiff*,

v.

REAR ADMIRAL W. A. BUCK, Paymaster General of the Navy, *Defendant*

Opinion

Action by Madeline Ursula Snyder, the widow of an officer of the United States Navy, for relief in the nature of a mandamus against the Paymaster General of the Navy, to require him to pay her an amount equal to six months' pay at the rate received by the deceased at the date of his death. Judgment for the plaintiff.

John Geyer Tausing, Esq., of Washington, D. C., for the plaintiff.

George Morris Fay, Esq., United States Attorney; D. Vance Swann, Esq.,; and William C. Brewer, Esq., all of Washington, D. C., for the defendant.

This is an action by the widow of a Naval officer for relief in the nature of a mandamus to direct the Paymaster General of the Navy to pay her an amount equal to six months' pay of the deceased at the rate received by him at the time of his death.

The pertinent statute provides that upon the death, from wounds or disease, of any officer or enlisted man on the active list of the regular Navy or regular Marine Corps, the Paymaster General of the Navy shall cause to be paid to the widow an amount equal to six months' pay at the rate received by the deceased at the time of his death. If there be no widow, the payment is to be made to his child or children, and if there be no widow or child, then to any other dependent relative of the deceased previously designated by him. The plaintiff and the deceased were married

on July 3, 1945, at Elkton, Maryland, and lived together as man and wife until the husband's death on March 10, 1946. The Paymaster General of the Navy declined to pay the statutory allowance to the plaintiff, on the alleged ground that her marriage to the deceased was invalid. The basis for this conclusion was that the plaintiff had been previously married; that the prior marriage ended in a divorce obtained in Mexico, although neither of the parties to the marriage was a resident of that country at the time when the divorce was granted; that this divorce was ineffective; and that, therefore, the plaintiff was not free to contract the second marriage. As the deceased left no children, the Navy Department paid the allowance to his sister.

The first question to be determined is whether the ruling of the Navy Department is subject to judicial review.

* * *

In view of the foregoing discussion, rulings of the Navy Department under the statute involved in the instant case have become subject to judicial review under the provisions of the Administrative Procedure Act.

We, therefore, reach a consideration of the ruling of the Navy Department on the plaintiff's claim for a widow's allowance. Section 10 (e) of the Administrative Procedure Act, which relates to the scope of judicial review, authorizes the reviewing court to decide all relevant questions of law and to set aside agency action found not to be in accordance with law. As in this case the facts are stipulated, the only question for the Court to determine is whether the Navy Department correctly applied the law to the facts.

The plaintiff married one James John Ford on October 4, 1937 in Lansdowne, Pennsylvania. Thereafter she and her husband resided in New Jersey. They were separated in November, 1944. On April 27, 1945 the plaintiff obtained a divorce in the State of Chihuahua, Republic of Mexico. Her husband filed an answer in the divorce proceeding in which he joined in the prayer for a decree of divorce. Neither party to the suit was a resident of Mexico and neither personally appeared in that country. On July 3, 1945 the plaintiff married Charles Snyder, a member of the naval personnel. At the time of their marriage, both parties were residents of New Jersey and continued to reside in

that State during their entire married life. The marriage, however, was performed in Elkton, Maryland. The husband died on March 10, 1946. At the time of his death the parties were living together.

The plaintiff filed an application as the widow of Charles Richard Snyder for an allowance under the statute heretofore mentioned. The Bureau of Naval Personnel, after an investigation, concluded that the divorce obtained by the plaintiff in Mexico from her first husband was not entitled to recognition and that, therefore, her subsequent marriage to the deceased was invalid. On this basis, the Navy Department declined to approve the plaintiff's claim for an allowance equal to six months' pay of the deceased, but paid this sum to his sister. Whether the plaintiff is entitled to the widow's allowance depends on whether her marriage to the deceased was valid or even if it was invalid, whether it is subject to a collateral attack by an administrative agency.

The parties entered into the married state by a ceremony performed by a minister. The inference is clear that they considered themselves free to marry. They lived together as husband and wife until the husband's death, and no doubt deemed themselves lawfully married. The deceased apparently never thought there was any infirmity in his marriage. He named his wife as the beneficiary of his life insurance policy under the National Life Insurance Act and also designated her as the proper recipient of a widow's allowance. He evidently went to his death without questioning or doubting the validity of his marriage.

The marriage was celebrated in Maryland, although both before and after the marriage ceremony the parties were residents of the State of New Jersey. The preliminary question to be determined is whether the law of New Jersey or the law of Maryland is applicable. It is well settled that the law of the place where a marriage is celebrated governs the validity of the marriage. *Loughran* v. *Loughran*, 292 U. S. 216; *Rhodes* v. *Rhodes*, 68 App. D. C. 313; *U. S. ex rel Hodianos* v. *Tuttle*, 12 F. (2d) 927; *Franzen* v. *E. I. Du Pont De Mours & Co.*, 146 F. (2d) 837; *Hitchens* v. *Hitchens*, 47 F. Supp. 73; *Fensterwald* v. *Burk*, 129 Md. 131; *Beale. The Conflict of Laws* Vol. II, pp. 667-669; *Restatement—Con-*

flict of Laws, pp. 185-187. This doctrine applies even if the parties are domiciled in a State different from that in which the marriage is celebrated, *Hitchins* v. *Hitchens, supra; Fensterwald* v. *Burk, supra.* The only exception to the general principle comprizes incestous and polygamous marriages, which are abhorrent to the general standards of morality. Consequently, in the instant case the validity of the marriage must be determined by the law of Maryland rather than by the law of New Jersey.

The Code of Maryland, Article 62, Section 16, provides, in part, as follows:

> "The Circuit Court for the several counties and the superior court of Baltimore City, may, upon petition of either of the parties, inquire into, hear and determine and the circuit court for the several counties and the criminal court of Baltimore, on indictment, may inquire into hear and determine the validity of any marriage and *may declare* any marriage contrary to the table in this article, or *any second marriage, the first subsisting, null and void; . . .*"

In *Harrison* v. *State,* 22 Md. 468, 490, the Court held that a marriage within the prohibited degrees was not void but voidable.

The statute just quoted was construed and applied in *Ridgely* v. *Ridgely,* 79 Md. 298. In that case a woman, who had resided in Maryland with her husband, went to South Dakota and obtained an absolute divorce in that State. Thereafter she returned to Maryland and contracted another marriage. Her first husband brought a suit in equity to annul the second marriage on the ground that the divorce procured in South Dakota was void and that, therefore, the wife was not competent to contract a second marriage. The court held that the second marriage might be annulled only in an action brought by one of the parties thereto. The conclusion seems to follow that under the law of Maryland, a marriage contracted by a person who is not free to marry is voidable, and may be annulled only by a decree of a court rendered in an action brought by one of the parties to the marriage.

Since in this instance no action to annul the marriage was ever brought by either party during the husband's lifetime, under the law of Maryland the marriage is not subject to attack collaterally. It follows, hence, that the plaintiff must be deemed to be the widow of the deceased and, as such, entitled to a widow's allowance.

In this connection it may be observed that to brand a marriage as invalid is a solemn matter. Such an adjudication may ordinarily be made only by a court of competent jurisdiction after a trial at which all interested parties have an opportunity to be heard. It is at best questionable whether an administrative agency, such as the Veterans' Administration, the Navy Department, or the War Department, has any authority to hold a marriage invalid in an *ex parte* manner on the basis of its own investigation. As a matter of public policy, it does not appear appropriate that an administrative agency of the Government should delve and dig into family skeletons in an endeavor to upset a marriage openly celebrated and apparently valid on its face, and which was deemed lawful by the parties thereto in their lifetime. The Congress did not intend that the Navy Department should pursue such a course, as is evidenced by the fact that the statute expressly requires payment of the widow's allowance to be made "immediately" upon official notification of the death of the deceased. Obviously, the Congress did not intend to vest in the Navy Department any authority to make exhaustive administrative investigations for the purpose of passing on the validity of a marriage apparently valid on its face.

The Court will accordingly render judgment directing the Paymaster General of the Navy to pay to the plaintiff the statutory widow's allowance.

The complaint prays for relief in the nature of a mandamus. This relief is inappropriate, in view of the fact that the act required to be performed is not purely ministerial. The plaintiff is entitled, however, to whatever judgment the evidence warrants, irrespective of whether it is the precise relief prayed for in the complaint.

Under Section 10(b) of the Administrative Procedure Act, and any applicable (*i. e.* suitable) form of relief may be

granted. The statute expressly suggests a mandatory injunction as a possible form of relief. Accordingly, the judgment will take the form of a mandatory injunction directing the necessary payment. It is sufficient that the Paymaster General of the Navy be the sole defendant, as in the light of the decision of the Supreme Court in *Williams* v. *Fanning* (decided December 8, 1947), the Secretary of the Navy is not an indispensable party.

Judgment for the plaintiff granting a mandatory injunction directing the defendant to pay to the plaintiff an amount equal to six months' pay at the rate received by the deceased at the time of his death.

Submit proposed findings and conclusions of law and proposed form of judgment.

(S.) ALEXANDER HOLTZOFF,
Associate Justice.

January 22, 1948.